



**U.S. Department of Justice**  
Office of Information Policy  
Suite 11050  
1425 New York Avenue, NW  
Washington, DC 20530-0001

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Telephone: (202) 514-3642

March 21, 2017

Mr. Michael Morisy  
MuckRock News  
Dept. MR 5903  
P.O. Box 55819  
Boston, MA 02205-5819  
[requests@muckrock.com](mailto:requests@muckrock.com)

Re: AG/13-03473 (F)  
CLM:VRB:VAV:ND

Dear Mr. Morisy:

This responds to your Freedom of Information Act (FOIA) request dated and received in this Office on May 30, 2013, in which you requested records concerning former Attorney General Holder's meeting with media organizations concerning the acquisition of media phone records. This response is made on behalf of the Office of the Attorney General (OAG).

By email sent on October 22, 2015, we advised you that we were continuing to process your request. Please be advised that we have conducted extensive records searches in the OAG including electronic and paper files and retired files of relevant officials in OAG. For your information, the retired files list file folder titles, arranged according to subject, of former OAG staff. These files are then hand-searched to identify folders that may contain responsive records. Once relevant folders are identified as possibilities for containing responsive material, the contents are reviewed and any responsive records are processed for disclosure. In an effort to further identify additional records that may be of interest to you, we reviewed records we had previously processed for related requests.

As a result of the above-described searches, a total of 156 pages were located that contain records responsive to your request. Please be advised that forty-four pages containing responsive records are appropriate for release with excisions made pursuant to Exemptions 6 and 7(C) of the FOIA, 5 U.S.C. § 552(b)(6), (b)(7)(C) and copies are enclosed. Exemption 6 pertains to information the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Exemption 7(C) pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties. Additionally, I have determined that 112 pages containing responsive records should be withheld in full pursuant to Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), which pertains to certain inter- and intra-agency communications protected by the deliberative process privilege. For your information, the withheld material consists of internal drafts and briefing materials prepared for meetings with news media representatives, talking points, and names and e-mail addresses.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2012). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison at the telephone number listed above for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal at <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked Freedom of Information Act Appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carmen L. Mallon', with a long horizontal line extending to the right.

Carmen L. Mallon  
Chief of Staff

Enclosures

## **Cole, James (ODAG)**

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**From:** Zebrak, Julie R. (ODAG)  
**Sent:** Tuesday, May 14, 2013 2:50 PM  
**To:** Cole, James (ODAG); Goldberg, Stuart (ODAG); O'Neil, David (ODAG)  
**Cc:** Dix, Melanie (ODAG)  
**Subject:** FW: Media coalition letter re: AP subpoena  
**Attachments:** Media coalition letter re AP subpoena.pdf

For Jim and the AG.

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**From:** Price, Allison W (OPA)  
**Sent:** Tuesday, May 14, 2013 2:46 PM  
**To:** Dix, Melanie (ODAG); Zebrak, Julie R. (ODAG)  
**Cc:** Chitre, Nanda (OPA)  
**Subject:** Media coalition letter re: AP subpoena

Melanie and Julie –

I am forwarding this letter that came in through our main email address for Press – it is addressed to the DAG and AG.

Allison

---

**From:** Press  
**Sent:** Tuesday, May 14, 2013 2:39 PM  
**To:** Chitre, Nanda (OPA); Price, Allison W (OPA)  
**Subject:** FW: Media coalition letter re: AP subpoena

Please see below,  
Helen

---

**From:** Gregg Leslie [<mailto:gleslie@rcfp.org>]  
**Sent:** Tuesday, May 14, 2013 2:37 PM  
**To:** ASKDOJ PUBLIC; Press; [dc.outreach@usdoj.gov](mailto:dc.outreach@usdoj.gov)  
**Cc:** Bruce Brown  
**Subject:** Media coalition letter re: AP subpoena

Attached please find a letter from a coalition of 52 media organizations, registering our complaints over the handling of the subpoena of the phone records of the Associated Press.

It is address to Attorney General Holder and Deputy Attorney General Cole. Please forward it to them.

(The cc to the U.S. Attorney for D.C. has been sent to a separate email address.)

Sincerely,

Gregg P. Leslie



Gregg P. Leslie  
Legal Defense Director  
1101 Wilson Blvd., Suite 1100, Arlington, VA 22209  
(703) 807-2102 \* [gleslie@rcfp.org](mailto:gleslie@rcfp.org)

# REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

1101 Wilson Blvd., Suite 1100  
Arlington, Va. 22209-2211  
(703) 807-2100  
www.rcfp.org

Bruce D. Brown  
Executive Director

---

## STEERING COMMITTEE

SCOTT APPLEWHITE  
*The Associated Press*

WOLF BLITZER  
*CNN*

DAVID BOARDMAN  
*Seattle Times*

CHIP BOK  
*Creators Syndicate*

ERIKA BOLSTAD  
*McClatchy Newspapers*

MICHAEL DUFFY  
*Time*

RICHARD S. DUNHAM  
*Houston Chronicle*

ASHLEA EBELING  
*Forbes Magazine*

FRED GRAHAM  
*InSession*

JOHN C. HENRY  
*Freelance*

NAT HENTOFF  
*United Media Newspaper Syndicate*

DAHLIA LITHWICK  
*Slate*

JANE MAYER  
*The New Yorker*

JOHN McKINNON  
*The Wall Street Journal*

TONY MAURO  
*National Law Journal*

DOYLE MCMANUS  
*Los Angeles Times*

ANDREA MITCHELL  
*NBC News*

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*New England Center for Investigative Reporting*

BILL NICHOLS  
*Politico*

SANDRA PEDDIE  
*Newsday*

JIM RUBIN  
*Bloomberg News*

BOB SCHIEFFER  
*CBS News*

ERIC SCHMITT  
*The New York Times*

ALICIA SHEPARD  
*Freelance*

MARGARET LOW SMITH  
*NPR*

PAUL STEIGER  
*Pro Publica*

PIERRE THOMAS  
*ABC News*

SAUNDRA TORRY  
*USA Today*

JUDY WOODRUFF  
*PBS/The NewsHour*

*Affiliations appear only  
for purposes of identification.*

May 14, 2013

Eric Holder, Attorney General  
James M. Cole, Deputy Attorney General  
U.S. Department of Justice  
via email: askdoj@usdoj.gov  
via fax: (202) 307-6777

Dear Sirs:

The nation's news media were stunned to learn yesterday of the Department of Justice's broad subpoena of telephone records belonging to The Associated Press. In the thirty years since the Department issued guidelines governing its subpoena practice as it relates to phone records from journalists, none of us can remember an instance where such an overreaching dragnet for newsgathering materials was deployed by the Department, particularly without notice to the affected reporters or an opportunity to seek judicial review. The scope of this action calls into question the very integrity of Department of Justice policies toward the press and its ability to balance, on its own, its police powers against the First Amendment rights of the news media and the public's interest in reporting on all manner of government conduct, including matters touching on national security which lie at the heart of this case.

We understand after today's press conference by the Attorney General that this matter was handled by the Deputy Attorney General. We write to both of you, to express our displeasure with how this incident was handled and demand that any similar actions in the future be handled with greater consideration of the news media's First Amendment rights.

Subpoenas of the news media for testimony and evidence are governed by the Attorney General's guidelines found at 28 C.F.R. § 50.10 and incorporated into the U.S. Attorney's Manual. *See* § 9-13.400. These guidelines were enacted in 1972 and were expanded specifically to cover telephone records in 1980. They were developed to accommodate both the interests of the government in prosecuting crime *and* the First Amendment interests in reporting on issues of public concern. We know this to be true because the Reporters Committee played a role in their promulgation. In this instance, where the Department subpoenaed two months of records related to 20 telephone lines, including records from major AP bureaus and the home phone and cell phone records of individual journalists, the Department appears to have ignored or brushed aside almost every aspect of the guidelines. Each one merits specific review.

*Narrow scope of the subpoena:* Section 50.10(g)(1) requires that a subpoena “should be as narrowly drawn as possible; it should be directed at relevant information regarding a limited subject matter and should cover a reasonably limited time period.” The available evidence shows that no such constraints were applied here. Instead of being directed at relevant records on a limited topic for a closely circumscribed time period, the subpoena appears to have covered *all* records that *could* be relevant so that prosecutors could plunder two months of newsgathering materials to seek information that might interest them.

*Seeking information from alternative sources:* Sections 50.10(b) and 50.10(g)(1) require the Department to take “all reasonable alternative investigative steps” before subpoenaing phone records. Although the public is not in a position to know what alternatives were pursued, the sheer breadth of this subpoena suggests that it was an initial investigative step taken as part of a prosecutor’s desire to gather up even the most remote material when beginning an investigation.

*Obligation to inform and negotiate:* Section 50.10(d) requires federal prosecutors to disclose their intent to pursue a subpoena and negotiate with the news media in “all cases” involving telephone records. Only if prosecutors determine that such negotiations would “pose a substantial threat to the integrity of the investigation” are these obligations removed. The purpose of such an exception is to ensure, in the rare inquiry where there is a reason to be concerned about the preservation of evidence, that records are not lost or destroyed. By deciding in this case involving one of the nation’s oldest and most respected news organizations that a subpoena *would* pose such a threat, the Department has severely harmed its working relationship with the news media, which time and time again have undertaken good-faith efforts to cooperate with government lawyers in a way that protects the public’s interest both in law enforcement and in independent and autonomous newsgathering.

*Attorney General approval:* Section 50.10(e) requires the “express authorization of the Attorney General” before any subpoena to the news media may issue. This requirement serves as a final backstop to prevent abuses by making sure accountability for these actions is placed at the very top of the agency. It was anticipated that the fact that media subpoenas must go to the highest official of the Justice Department would ensure that government lawyers would take every precaution before asking for approval and that the Attorney General would serve as a check on abusive practices that would undermine the sensitive relationship between journalists and their sources, and between the press and the government. But the system failed here – either because your approval was not sought, or because it was given when it should not have been.

*Balancing of interests:* The very point of the guidelines is to ensure that the Department conforms its behavior to the understanding “the approach in every case must be to strike the proper balance between the public’s interest in the free dissemination of ideas and information and the public’s interest in effective law enforcement and the fair administration of justice.” See Section 50.10(a). By authorizing a subpoena with such an overly broad scope; by gathering journalists’ information apparently as a first resort, not a last resort; by refusing to negotiate with the media in an open and transparent exchange

of arguments after full disclosure by the government of the records sought; and by evidently obtaining the approval of the Attorney General when none of the protections has been met, it is plain that no such honest balancing of interests occurred in this instance.

The Department's actions demonstrate that a strong federal shield law is needed to protect reporters and their newsgathering materials in a court of law where the adversarial process ensures a fair weighing of the issues. While Congress should provide that remedial legislation, there is still much that this Department can do to mitigate the damage it has caused.

It should immediately return the telephone toll records obtained and destroy all copies, as requested by The Associated Press. If it refuses, it should at the very least segregate these records and prohibit any further use of them at this time. It should explain how government lawyers overreached so egregiously in this matter and describe what the Department will do to mitigate the impact of these actions. Additionally, the Department must also publicly disclose more information on who has had access to the records and what protections were taken to ensure that information unrelated to a specific criminal investigation was not utilized by any Department employees. This undertaking is consistent with § 50.10(g)(4) ("Any information obtained as a result of a subpoena issued for telephone toll records shall be closely held so as to prevent disclosure of the information to unauthorized persons or for improper purposes.")

And finally, the Department should announce whether it has served any other pending news media-related subpoenas that have not yet been disclosed.

We look forward to your prompt response.

Sincerely,

The Reporters Committee for Freedom of the Press

Bruce D. Brown, Executive Director, [bbrown@rcfp.org](mailto:bbrown@rcfp.org)

Gregg P. Leslie, Legal Defense Director, [gleslie@rcfp.org](mailto:gleslie@rcfp.org)

A. H. Belo Corporation

ABC, Inc.

Advance Publications, Inc.

Allbritton Communications Company

ALM Media, LLC

American Society of News Editors

Association of Alternative Newsmedia

The Association of American Publishers, Inc.

Atlantic Media, Inc.

Bay Area News Group

Cable News Network, Inc.

California Newspaper Publishers Association

*continued on next page*

Media Coalition Letter Regarding AP Subpoena, page 4

California Newspapers Partnership  
Cox Media Group, Inc.  
Daily News, LP  
Digital First Media, LLC  
Digital Media Law Project  
Dow Jones & Company, Inc.  
The E.W. Scripps Company  
First Amendment Coalition  
Forbes Inc.  
Free Press  
Gannett Co., Inc.  
Journal Communications, Inc.  
Lee Enterprises  
LIN Media  
The McClatchy Company  
Media News Group, Inc.  
National Association of Broadcasters  
The National Press Club  
National Press Photographers Association  
NBCUniversal Media, LLC  
The New York Times Company  
Newspaper Association of America  
The Newspaper Guild – CWA  
The Newsweek/Daily Beast Company LLC  
North Jersey Media Group Inc.  
NPR, Inc.  
Online News Association  
POLITICO LLC  
Radio Television Digital News Association  
Reporters Without Borders  
Reuters America LLC  
The Seattle Times Company  
Society of Professional Journalists  
Stephens Media LLC  
Student Press Law Center  
Time Inc.  
Tribune Company  
21st Century Media Newspaper  
The Washington Post

CC: U.S. Attorney Ronald C. Machen, Jr.  
via email: [dc.outreach@usdoj.gov](mailto:dc.outreach@usdoj.gov)

Office of Public Affairs  
via email: [press@usdoj.gov](mailto:press@usdoj.gov)



## **Cole, James (ODAG)**

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**From:** O'Neil, David (ODAG)  
**Sent:** Thursday, May 16, 2013 2:40 PM  
**To:** Cole, James (ODAG); Goldberg, Stuart (ODAG)  
**Subject:** FW: AP writing "profile" about USA Machen and DAG Cole

FYI

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**From:** Price, Allison W (OPA)  
**Sent:** Thursday, May 16, 2013 2:40 PM  
**To:** Chitre, Nanda (OPA); O'Neil, David (ODAG); Zebrak, Julie R. (ODAG)  
**Subject:** AP writing "profile" about USA Machen and DAG Cole

Dave and Julie – just heard from the USAO-DC on the following piece that the AP is working on. OPA has not heard from the reporter directly yet.

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**From:** Miller, William (USADC)  
**Sent:** Thursday, May 16, 2013 2:37 PM  
**To:** Chitre, Nanda (OPA); Price, Allison W (OPA); Jenkins, Adora (OPA)  
**Subject:** AP writing "profile" about USA Machen and DAG Cole

FYI, AP reporter Eric Tucker is writing a story about USA Machen and DAG Cole and their respective roles in the leaks investigation. The story also is supposed to be a sort of profile on them. USA Machen has been unavailable for interviews. Eric has interviewed people like Ken Wainstein and Jamie Gorelick, along with others for the story.

**Bill Miller**  
**Public Information Officer**  
**U.S. Attorney's Office for the District of Columbia**  
**202-252-6643 (Direct)**  
**202-252-6933 (Main)**  
**[william.miller3@usdoj.gov](mailto:william.miller3@usdoj.gov)**

## **Cole, James (ODAG)**

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**From:** O'Neil, David (ODAG)  
**Sent:** Thursday, May 16, 2013 3:58 PM  
**To:** Cole, James (ODAG); Goldberg, Stuart (ODAG)  
**Subject:** Fw: AP writing "profile" about USA Machen and DAG Cole

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**From:** Price, Allison W (OPA)  
**Sent:** Thursday, May 16, 2013 03:51 PM  
**To:** O'Neil, David (ODAG); Zebrak, Julie R. (ODAG)  
**Cc:** Chitre, Nanda (OPA)  
**Subject:** AP writing "profile" about USA Machen and DAG Cole

More info on the AP piece from USAO-DC.

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**From:** Miller, William (USADC)  
**Sent:** Thursday, May 16, 2013 3:48 PM  
**To:** Jenkins, Adora (OPA); Price, Allison W (OPA); Chitre, Nanda (OPA)  
**Subject:** RE: AP writing "profile" about USA Machen and DAG Cole

Matt Jones, Special Counsel to USA Machen, and I just met with Eric Tucker on background only. We explained to him that the subpoenas were not "personality-driven," but the work of a larger team of prosecutors tasked with investigating a serious case. We did not discuss any internal deliberations and provided nothing on-the-record. We listened to his points about the subpoenas being overly aggressive and suggested that he carefully study the guidelines and regulations regarding media subpoenas to see how much careful consideration is required by the prosecution team and throughout the various levels of review. Eric appears to be working on the story with Pete Yost. Mostly we tried to urge that the story reflect balance.

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**From:** Miller, William (USADC)  
**Sent:** Thursday, May 16, 2013 2:37 PM  
**To:** Chitre, Nanda (OPA); Price, Allison W (OPA); Jenkins, Adora (OPA)  
**Subject:** AP writing "profile" about USA Machen and DAG Cole

FYI, AP reporter Eric Tucker is writing a story about USA Machen and DAG Cole and their respective roles in the leaks investigation. The story also is supposed to be a sort of profile on them. USA Machen has been unavailable for interviews. Eric has interviewed people like Ken Wainstein and Jamie Gorelick, along with others for the story.

**Bill Miller**

**Public Information Officer**

**U.S. Attorney's Office for the District of Columbia**

**202-252-6643 (Direct)**

**202-252-6933 (Main)**

**[william.miller3@usdoj.gov](mailto:william.miller3@usdoj.gov)**

DENNIS A. ROSS  
15TH DISTRICT, FLORIDA

COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON CAPITAL MARKETS &  
GOVERNMENT SPONSORED ENTERPRISES

SUBCOMMITTEE ON OVERSIGHT &  
INVESTIGATIONS

**Congress of the United States**  
**House of Representatives**  
**229 Cannon Building**  
**Washington, DC 20515**

☐ WASHINGTON, DC  
229 CANNON HOB  
WASHINGTON, DC 20515  
PHONE: (202) 225-1252  
FAX: (202) 225-0585

☐ LAKELAND  
170 FITZGERALD ROAD, SUITE 1  
LAKELAND, FL 33813  
PHONE: (863) 644-8213  
FAX: (863) 648-0749  
[HTTP://DENNISROSS.HOUSE.GOV](http://DENNISROSS.HOUSE.GOV)

May 14, 2013

Eric Holder  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Ave NW Rm 1145  
Washington, DC 20530-0009

Dear Attorney General Holder:

I write today to express my strong disapproval of the Department of Justice's (DOJ) seizure of phone records from reporters and editors within the Associated Press (AP).

These disturbing actions not only threaten the ability for the AP and other news organizations to conduct their duties to investigate and report the news – but also threaten our constitutional form of government.

The First Amendment to the Constitution clearly outlines the protections for the unfettered freedom of the press within the United States. However, the recent seizure of phone records, coordinated by your agency, chip away at the Constitution, at our democracy, and at our citizens' freedom.

Under your leadership, the DOJ has lost the trust of the American public on a number of occasions. As with the previous incidents, I will once again be calling on my colleagues in the House to initiate a swift and thorough investigation into the actions taken by the DOJ.

In the meantime, I would like a full accounting of why the DOJ pursued these records, and violated the rights of those protected by the First Amendment of the Constitution.

Sincerely,



Dennis Ross  
Member of Congress



**U.S. Department of Justice**

**Office of Legislative Affairs**

Office of the Assistant Attorney General

*Washington, D.C. 20530*

**AUG 26 2013**

The Honorable Dennis Ross  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Ross:

This responds to your May 14, 2013 letter to the Attorney General concerning the Department of Justice's receipt of subpoenaed toll records for certain telephone numbers associated with the Associated Press during a limited period within April and May 2012.

In May 2012, the Department opened criminal investigations into the unauthorized disclosure of classified information. It is important that we pursue these matters using appropriate law enforcement tools because such unauthorized disclosures can pose risks of serious harm to our national security and, in some instances, individual safety. In this case, the Department conducted a comprehensive investigation, including 550 interviews and the review of tens of thousands of documents, before seeking the toll records at issue.

As the Attorney General testified in June 2012, he was interviewed by the FBI in connection with the investigation into the unauthorized disclosure of classified information. To avoid the potential appearance of a conflict of interest and to ensure an independent investigation, the Attorney General recused himself from this matter. Since that time, this investigation has been conducted by the FBI under the direction of the U.S. Attorney for the District of Columbia. Consistent with Department regulations and policies, the Deputy Attorney General approved the decision to seek media toll records in this investigation in his role as Acting Attorney General.

Department policy provides that subpoenas for toll records associated with media organizations should be requested only in certain limited circumstances. First, there must be reasonable grounds to believe that a federal crime has been committed and that the information sought by the subpoena is essential to the success of the investigation. Second, we must take all reasonable alternative investigative steps before even considering the issuance of a subpoena for toll records related to a media organization. Third, any subpoena should be drawn as narrowly as possible, be directed at relevant information regarding a limited subject matter, and cover a reasonably limited period of time. We take these requirements very seriously and followed them in this matter.

The Honorable Dennis Ross  
Page Two

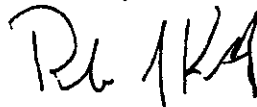
Consistent with Department policy, the subpoenas directed at toll records associated with the AP were limited in time and scope. They sought only toll records and did not seek the content of any calls. We note that toll records – not unlike a telephone bill – merely provide a list of incoming and outgoing calls, including the time, date, and duration of each call. These subpoenas covered only a portion of a two-month period, and they sought toll records for phone numbers which prosecutors had a basis to believe were associated with AP personnel involved in the reporting of the classified information. The toll records have been and will remain closely held. They have been used solely for purposes of this ongoing investigation, and access has been and will continue to be restricted accordingly. We are not in a position to disclose additional information about this matter. The Department has a longstanding policy against the disclosure of non-public information regarding open criminal investigations and prosecutions in order to protect the integrity of our law enforcement efforts. The disclosure of additional information about this ongoing case could risk harm both to our continuing law enforcement efforts, as well as the privacy and due process interests of those involved.

We appreciate the concerns that have been raised by the media in connection with this case. Freedom of the press is essential to our democracy, and the Department always strives to strike the right balance between the public's interest in national security and enforcement of our criminal laws and the public's interest in the free flow of information. The Attorney General has initiated a reevaluation of existing Department policies and procedures regarding investigations involving the media. As part of that review, the Attorney General will consult a diverse and representative group of media organizations as well as other experts inside and outside government.

The Department remains committed to using appropriate law enforcement tools to investigate unauthorized disclosures of classified information that can cause grave harm to our national security. Such investigations and prosecutions, including this particular case, follow all applicable laws, regulations, and Department policies intended to safeguard the First Amendment interests of the press in reporting the news and the public in receiving it.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "PJ Kadzik", written in a cursive, stylized script.

Peter J. Kadzik  
Principal Deputy Assistant Attorney General

JON TESTER  
MONTANA

COMMITTEES:

APPROPRIATIONS  
BANKING  
INDIAN AFFAIRS  
VETERANS' AFFAIRS  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS

SENATE HART BUILDING  
SUITE 706  
WASHINGTON, DC 20510  
202-224-2644

MONTANA TOLL FREE NUMBER  
1-866-554-4403

INTERNET:  
<http://tester.senate.gov/contact>

# United States Senate

May 15, 2013

The Honorable Eric H. Holder, Jr.  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

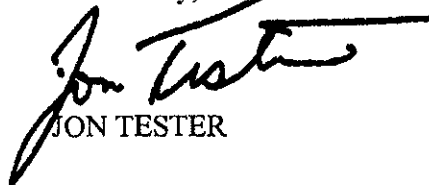
Dear Attorney General Holder:

I write today with serious concerns regarding recent revelations that the Department of Justice seized telephone records for over 20 different phone lines assigned to the Associated Press (AP) and its journalists. As reported, these actions represent a blatant violation of privacy, and directly interfere with the Constitutionally protected rights of the press to do its job free from government intrusion or direction. Such actions are not what Americans expect. And they're not what Americans deserve.

As you well know, protecting our nation's security interests while respecting the civil liberties and privacy interests of our citizens often requires a delicate balancing act. A fine line is often what divides right and wrong. Since the enactment of the USA PATRIOT Act we have seen respect for civil liberties diminish. From the Bush Administration's poorly conceived "REAL ID Act" to your decision two years ago to unilaterally reform the FBI manual to make it easier to go through the trash of American citizens, this steady erosion of civil liberties has too often been bipartisan in nature. And once again, in this particular matter, it seems clear that the Department of Justice flagrantly crossed the line. Such ill-advised actions create distrust in the American people. They also make it more difficult for agencies such as the Department of Justice to utilize all of the legitimate and legal tools at its disposal to keep us safe.

Montanans, like all Americans, expect the highest levels of transparency and accountability from the government officials they have elected or support with their hard-earned tax dollars. I strive to fulfill my end of the bargain every day, and it's why I fight so hard to bring more transparency and accountability to our government. Moving forward, I request the legal justification for the actions taken by the Department of Justice with respect to the AP, as well as the safeguards that are in place or will be put in place to prevent such blatant violations of privacy from occurring in the future. I appreciate that you have begun a thorough internal investigation into this matter, but I expect that you will provide regular updates to the Senate on this matter as well. I appreciate your attention to this matter.

Sincerely,



JON TESTER

BOZEMAN  
(406) 586-4450

BUTTE  
(406) 723-3277

GLENDALE  
(406) 365-2391

GREAT FALLS  
(406) 452-9585

HELENA  
(406) 449-5401

KALISPELL  
(406) 257-3360

BILLINGS  
(406) 252-0550

MISSOULA  
(406) 728-3003



**U.S. Department of Justice**

**Office of Legislative Affairs**

Office of the Assistant Attorney General

*Washington, D.C. 20530*

**AUG 26 2013**

The Honorable Jon Tester  
United States Senate  
Washington, D.C. 20510

Dear Senator Tester:

This responds to your May 15, 2013 letter to the Attorney General concerning the Department of Justice's receipt of subpoenaed toll records for certain telephone numbers associated with the Associated Press during a limited period within April and May 2012.

In May 2012, the Department opened criminal investigations into the unauthorized disclosure of classified information. It is important that we pursue these matters using appropriate law enforcement tolls because such unauthorized disclosures can pose risks of serious harm to our national security and, in some instances, individual safety. In this case, the Department conducted a comprehensive investigation, including 550 interviews and the review of tens of thousands of documents, before seeking the toll records at issue.

As the Attorney General testified in June 2012, he was interviewed by the FBI in connection with the investigation into the unauthorized disclosure of classified information. To avoid the potential appearance of a conflict of interest and to ensure an independent investigation, the Attorney General recused himself from this matter. Since that time, this investigation has been conducted by the FBI under the direction of the U.S. Attorney for the District of Columbia. Consistent with Department regulations and policies, the Deputy Attorney General approved the decision to seek media toll records in this investigation in his role as Acting Attorney General.

Department policy provides that subpoenas for toll records associated with media organizations should be requested only in certain limited circumstances. First, there must be reasonable grounds to believe that a federal crime has been committed and that the information sought by the subpoena is essential to the success of the investigation. Second, we must take all reasonable alternative investigative steps before even considering the issuance of a subpoena for toll records related to a media organization. Third, any subpoena should be drawn as narrowly as possible, be directed at relevant information regarding a limited subject matter, and cover a reasonably limited period of time. We take these requirements very seriously and followed them in this matter.

Consistent with Department policy, the subpoenas directed at toll records associated with the AP were limited in time and scope. They sought only toll records and did not see the



The Honorable Jon Tester  
Page Two

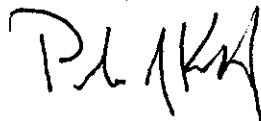
content of any calls. We note that toll records -- not unlike a telephone bill -- merely provide a list of incoming and outgoing calls, including the time, date, and duration of each call. These subpoenas covered only a portion of a two-month period, and they sought toll records for phone numbers which prosecutors had a basis to believe were associated with AP personnel involved in the reporting of the classified information. The toll records have been and will remain closely held. They have been used solely for purposes of this ongoing investigation, and access has been and will continue to be restricted accordingly. We are not in a position to disclose additional information about this matter. The Department has a longstanding policy against the disclosure of non-public information regarding open criminal investigations and prosecutions in order to protect the integrity of our law enforcement efforts. The disclosure of additional information about this ongoing case could risk harm both to our continuing law enforcement efforts, as well as the privacy and due process interests of those involved.

We appreciate the concerns that have been raised by the media in connection with this case. Freedom of the press is essential to our democracy, and the Department always strives to strike the right balance between the public's interest in national security and enforcement of our criminal laws and the public's interest in the free flow of information. The Attorney General has initiated a reevaluation of existing Department policies and procedures regarding investigations involving the media. As part of that review, the Attorney General will consult a diverse and representative group of media organizations as well as other experts inside and outside government.

The Department remains committed to using appropriate law enforcement tools to investigate unauthorized disclosures of classified information that can cause grave harm to our national security. Such investigations and prosecutions, including this particular case, follow all applicable laws, regulations, and Department policies intended to safeguard the First Amendment interest of the press in reporting the news and the public in receiving it.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'PJ Kadzik', written in a cursive, stylized script.

Peter J. Kadzik  
Principal Deputy Assistant Attorney General

## United States Senate

WASHINGTON, DC 20510-4305

May 15, 2013

### Via Electronic Transmission

The Honorable Eric Holder  
Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Dear Attorney General Holder:

I write concerning reports that the Department of Justice broadly obtained records of telephone lines assigned to the Associated Press and its journalists. The scope of the reported seizure -- records of more than 20 numbers, including press bureaus and home and cell phone lines of journalists, over two months in 2012 -- raises serious questions about the government's investigative tactics and respect for the freedom of the press guaranteed by the First Amendment. Over broad, aggressive targeting of the press with criminal investigation potentially imperils the freedom on which our democracy rests.


According to a letter by Mr. Gary B. Pruitt, President and CEO of the AP, that organization received notice on Friday from U.S. Attorney Ronald C. Machen, Jr., that he had obtained the records in question without notice either to the AP or its journalists. Mr. Machen apparently sought the records as part of his investigation into several apparent leaks of sensitive national security information last year. When those leaks came to light, members of Congress, myself included, demanded an independent investigation. You refused and appointed Mr. Machen.

Justice Department regulations sensibly discourage fishing expeditions of the press and require the Attorney General's authorization before the issuance of any subpoena to a member of the news media or for the telephone toll records of a member of the news media. The regulations -- important guarantees of press freedom -- should result in modest use of such subpoenas, which makes your statement yesterday that you were not sure how many you had authorized troubling. I want to understand fully your involvement in this matter: what you knew, when you knew, what you authorized and what basis you had for making the decisions you did. To the extent you were not involved, I want to know who was, what they decided and whether they regard Mr. Machen's actions as consistent with department regulations.

The leaks that led to Mr. Machen's investigation reportedly emanated from the highest levels of the Administration. The response to that ought to have been aggressive inquiry into those in the Administration with access to the information allegedly leaked. What we are seeing now is an aggressive investigation into the journalists who reported the leaked information. In my view, the Justice Department should be more aggressive in its investigation of the leaker(s), and out of proper regard for the First Amendment, less sweeping in its intrusion into the constitutionally protected activity of those who reported the leak.

I appreciate your prompt and thorough answers to the questions I have raised in this letter.

Sincerely,



JOHN CORNYN  
United States Senator



**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

*Washington, D.C. 20530*

**AUG 26 2013**

The Honorable John Cornyn  
United States Senate  
Washington, DC 20510

Dear Senator Cornyn:

This responds to your May 15, 2013 letter to the Attorney General concerning the Department of Justice's receipt of subpoenaed toll records for certain telephone numbers associated with the Associated Press during a limited period within April and May 2012.

In May 2012, the Department opened criminal investigations into the unauthorized disclosure of classified information. It is important that we pursue these matters using appropriate law enforcement tolls because such unauthorized disclosures can pose risks of serious harm to our national security and, in some instances, individual safety. In this case, the Department conducted a comprehensive investigation, including 550 interviews and the review of tens of thousands of documents, before seeking the toll records at issue.

As the Attorney General testified in June 2012, he was interviewed by the FBI in connection with the investigation into the unauthorized disclosure of classified information. To avoid the potential appearance of a conflict of interest and to ensure an independent investigation, the Attorney General recused himself from this matter. Since that time, this investigation has been conducted by the FBI under the direction of the U.S. Attorney for the District of Columbia. Consistent with Department regulations and policies, the Deputy Attorney General approved the decision to seek media toll records in this investigation in his role as Acting Attorney General.

Department policy provides that subpoenas for toll records associated with media organizations should be requested only in certain limited circumstances. First, there must be reasonable grounds to believe that a federal crime has been committed and that the information sought by the subpoena is essential to the success of the investigation. Second, we must take all reasonable alternative investigative steps before even considering the issuance of a subpoena for toll records related to a media organization. Third, any subpoena should be drawn as narrowly as possible, be directed at relevant information regarding a limited subject matter, and cover a reasonably limited period of time. We take these requirements very seriously and followed them in this matter.

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The Honorable Jon Cornyn  
Page Two

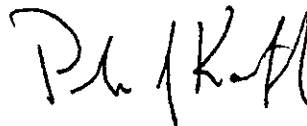
content of any calls. We note that toll records – not unlike a telephone bill – merely provide a list of incoming and outgoing calls, including the time, date, and duration of each call. These subpoenas covered only a portion of a two-month period, and they sought toll records for phone numbers which prosecutors had a basis to believe were associated with AP personnel involved in the reporting of the classified information. The toll records have been and will remain closely held. They have been used solely for purposes of this ongoing investigation, and access has been and will continue to be restricted accordingly. We are not in a position to disclose additional information about this matter. The Department has a longstanding policy against the disclosure of non-public information regarding open criminal investigations and prosecutions in order to protect the integrity of our law enforcement efforts. The disclosure of additional information about this ongoing case could risk harm both to our continuing law enforcement efforts, as well as the privacy and due process interests of those involved.

We appreciate the concerns that have been raised by the media in connection with this case. Freedom of the press is essential to our democracy, and the Department always strives to strike the right balance between the public's interest in national security and enforcement of our criminal laws and the public's interest in the free flow of information. The Attorney General has initiated a reevaluation of existing Department policies and procedures regarding investigations involving the media. As part of that review, the Attorney General will consult a diverse and representative group of media organizations as well as other experts inside and outside government.

The Department remains committed to using appropriate law enforcement tools to investigate unauthorized disclosures of classified information that can cause grave harm to our national security. Such investigations and prosecutions, including this particular case, follow all applicable laws, regulations, and Department policies intended to safeguard the First Amendment interest of the press in reporting the news and the public in receiving it.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "P. J. Kadzik", written in a cursive style.

Peter J. Kadzik  
Principal Deputy Assistant Attorney General

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-0919

May 15, 2013

Attorney General Eric Holder  
Office of the Attorney General  
The United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Deputy Attorney General James Cole  
Office of the Attorney General  
The United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Attorney General Holder and Deputy Attorney General Cole:

We are writing to express our strong concern about recent reports that your Department of Justice has been monitoring more than 20 Associated Press phone lines, including home phones and cellphones, without their knowledge and in possible violation of the organization's First Amendment rights. As we understand, Deputy Attorney General Cole authorized this search, and yet rules published by the Justice Department require subpoenas of records of news organizations must be personally approved by the Attorney General.

Given these facts, we request that you appoint a Special Counsel to investigate whether the Justice Department violated the First Amendment to the U.S. Constitution during their monitoring of the Associated Press. Additionally, we request that you respond fully to the following questions:

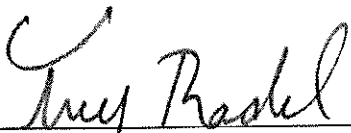
- 1) Who within the Justice Department approved, was aware of and supervised the monitoring of the Associated Press phone lines?
- 2) If you are required to approve all subpoenas of records of news organizations, did you review the Justice Department's subpoena of the Associated Press phone lines? If not, why?
- 3) Has a monitoring of this scope and breadth occurred previously at the Justice Department, and if so, what news organizations or reporters were monitored and why?
- 4) How will those responsible be held accountable for their actions?

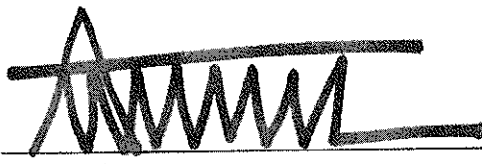
We believe the American public deserves answers. Freedom of speech and of the press is the very cornerstone upon which our country was founded and should be fiercely protected by our government.

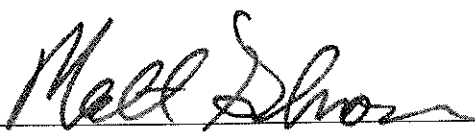
As the top law enforcement branch in the land, we understand you are obligated to investigate national security leaks; however, that does not give your Department carte blanche to launch an unprecedented probe. It has become obvious that once again, the Justice Department has little respect for the very rule of law they are tasked with enforcing.

Thank you for your time and attention to this matter. We look forward to your response.

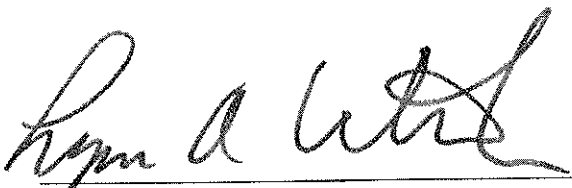
Sincerely,


  
TREY RADEL  
MEMBER OF CONGRESS


  
TED POE  
MEMBER OF CONGRESS

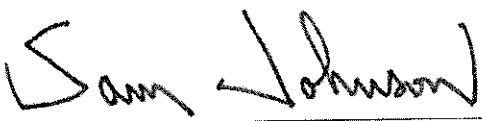
  
MATT SALMON  
MEMBER OF CONGRESS

  
DON YOUNG  
MEMBER OF CONGRESS

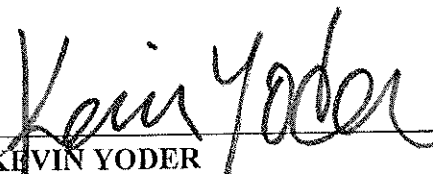
  
LYNN WESTMORELAND  
MEMBER OF CONGRESS

  
LUKE MESSER  
MEMBER OF CONGRESS

  
MARSHA BLACKBURN  
MEMBER OF CONGRESS

  
SAM JOHNSON  
MEMBER OF CONGRESS

  
RICHARD NUGENT  
MEMBER OF CONGRESS

  
KEVIN YODER  
MEMBER OF CONGRESS



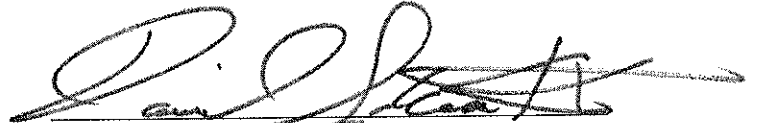
STEVE PEARCE  
MEMBER OF CONGRESS



ILEANA ROS-LEHTINEN  
MEMBER OF CONGRESS



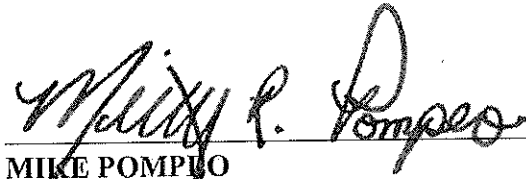
BILLY LONG  
MEMBER OF CONGRESS



DAVID SCHWEIKERT  
MEMBER OF CONGRESS



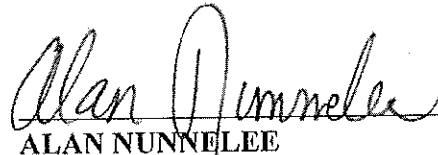
RENEE ELLMERS  
MEMBER OF CONGRESS




MIKE POMPEO  
MEMBER OF CONGRESS



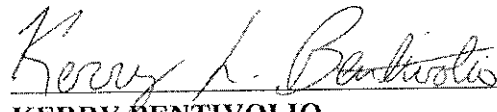
SCOTT TIPTON  
MEMBER OF CONGRESS



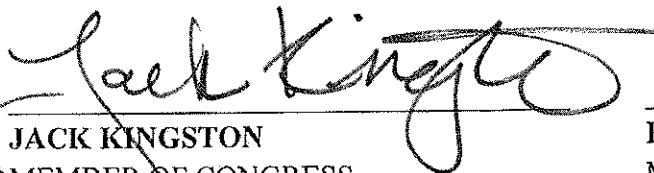
ALAN NUNNELEE  
MEMBER OF CONGRESS



JEFF DUNCAN  
MEMBER OF CONGRESS



KERRY BENTIVOLIO  
MEMBER OF CONGRESS



JACK KINGSTON  
MEMBER OF CONGRESS

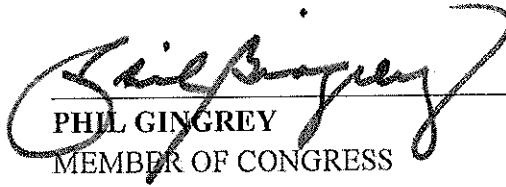


PAUL COOK  
MEMBER OF CONGRESS





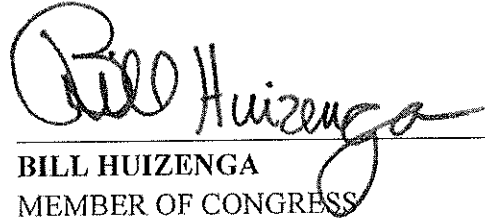
MO BROOKS  
MEMBER OF CONGRESS



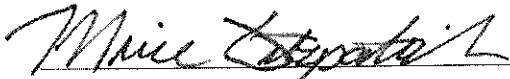
PHIL GINGREY  
MEMBER OF CONGRESS



JOHN ABNEY CULBERSON  
MEMBER OF CONGRESS



BILL HUIZENGA  
MEMBER OF CONGRESS



MICHAEL FITZPATRICK  
MEMBER OF CONGRESS



STEVE STIVERS  
MEMBER OF CONGRESS



JO BONNER  
MEMBER OF CONGRESS



**U.S. Department of Justice**

**Office of Legislative Affairs**

Office of the Assistant Attorney General

*Washington, D.C. 20530*

**AUG 26 2013**

The Honorable Trey Radel  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Radel:

This responds to your May 15, 2013 letter to the Attorney General and Deputy Attorney General concerning the Department of Justice's receipt of subpoenaed toll records for certain telephone numbers associated with the Associated Press during a limited period within April and May 2012. We are sending identical responses to the other Members of Congress who joined in your letter to us.

In May 2012, the Department opened criminal investigations into the unauthorized disclosure of classified information. It is important that we pursue these matters using appropriate law enforcement tools because such unauthorized disclosures can pose risks of serious harm to our national security and, in some instances, individual safety. In this case, the Department conducted a comprehensive investigation, including 550 interviews and the review of tens of thousands of documents, before seeking the toll records at issue.

As the Attorney General testified in June 2012, he was interviewed by the FBI in connection with the investigation into the unauthorized disclosure of classified information. To avoid the potential appearance of a conflict of interest and to ensure an independent investigation, the Attorney General recused himself from this matter. Since that time, this investigation has been conducted by the FBI under the direction of the U.S. Attorney for the District of Columbia. Consistent with Department regulations and policies, the Deputy Attorney General approved the decision to seek media toll records in this investigation in his role as Acting Attorney General.

Department policy provides that subpoenas for toll records associated with media organizations should be requested only in certain limited circumstances. First, there must be reasonable grounds to believe that a federal crime has been committed and that the information sought by the subpoena is essential to the success of the investigation. Second, we must take all reasonable alternative investigative steps before even considering the issuance of a subpoena for toll records related to a media organization. Third, any subpoena should be drawn as narrowly as possible, be directed at relevant information regarding a limited subject matter, and cover a reasonably limited period of time. We take these requirements very seriously and followed them in this matter.

The Honorable Trey Radel  
Page Two

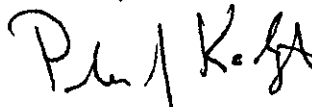
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We appreciate the concerns that have been raised by the media in connection with this case. Freedom of the press is essential to our democracy, and the Department always strives to strike the right balance between the public's interest in national security and enforcement of our criminal laws and the public's interest in the free flow of information. The Attorney General has initiated a reevaluation of existing Department policies and procedures regarding investigations involving the media. As part of that review, the Attorney General will consult a diverse and representative group of media organizations as well as other experts inside and outside government.

The Department remains committed to using appropriate law enforcement tools to investigate unauthorized disclosures of classified information that can cause grave harm to our national security. Such investigations and prosecutions, including this particular case, follow all applicable laws, regulations, and Department policies intended to safeguard the First Amendment interests of the press in reporting the news and the public in receiving it.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter J. Kadzik". The signature is stylized with a large "P" and "K".

Peter J. Kadzik  
Principal Deputy Assistant Attorney General

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CHAIRMAN

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KEITH J. ROTHFUS, Pennsylvania

ONE HUNDRED THIRTEENTH CONGRESS

# Congress of the United States

## House of Representatives

### COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

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SUZAN K. DELBENE, Washington  
JOE GARCIA, Florida  
HAKEEM S. JEFFRIES, New York

May 22, 2013

The Honorable James M. Cole  
Deputy Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Dear Deputy Attorney General Cole:

We are writing to you in your capacity as Acting Attorney General for a national security leaks investigation in which the Justice Department subpoenaed two months of telephone call records of reporters and editors for the Associated Press (AP). According to media reports, the Justice Department obtained telephone records for the main AP telephone number in the U.S. House of Representatives Press Gallery, for AP office numbers in New York City, Washington, D.C., and Hartford, Connecticut, and for the work and personal phone numbers of individual reporters. In total, the Justice Department obtained call records for at least 20 separate phone lines during the months of April and May of last year. According to the AP, more than 100 journalists work in the offices where the phones are located.

At a press conference on May 14, 2013, and before a House Judiciary Committee hearing on May 15, 2013, Attorney General Eric Holder stated that the subpoenas were issued in an investigation into leaks of information relating to a matter of national security. Attorney General Holder also revealed that he recused himself from the investigation because he had been interviewed by the FBI in connection with the leaks, and "because I thought it would be inappropriate and have a bad appearance to be a person who was a fact witness in the case to actually lead the investigation, given the fact, unlike Mr. Cole, that I have a greater interaction with members of the press than he does."<sup>1</sup>

In a letter dated May 14, 2013, you informed Mr. Gary Pruitt, AP President and CEO, that the criminal investigation into the unauthorized disclosure of classified information was opened in May 2012. Your letter also restated some of the regulations found in 28 CFR §50.10

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<sup>1</sup> Transcript of House Judiciary Committee Hearing on Oversight of the United States Department of Justice at page 31, line 644, May 15, 2013.

Mr. James M. Cole  
May 22, 2013  
Page 2

and incorporated into the U.S. Attorney's manual regarding the procedures that must be followed when the Justice Department seeks to subpoena information belonging to journalists. The regulations require the Justice Department to take all reasonable alternative investigative steps before considering subpoenas for telephone toll records of any member of the media.<sup>2</sup> In addition, the regulations require negotiations with the media to be pursued in all cases involving such subpoenas where the Assistant Attorney General determines that such negotiations would not pose "a substantial threat to the integrity of the investigation."<sup>3</sup> There is also a requirement that the subpoenas be drawn as narrowly as possible, namely that they be directed at relevant information regarding a limited subject matter and should cover a reasonably limited time period.<sup>4</sup>

The AP reports that five of the reporters and one of the editors targeted by the Justice Department were involved in a May 7, 2012, story about a failed airline bomb plot originating in Yemen. According to media reports, the AP held the story back for a week upon the request of the CIA, and only published the story once the CIA indicated that it no longer had such concerns about risks to national security.<sup>5</sup>

At the House Judiciary Committee oversight hearing, Attorney General Holder repeatedly stated that he could not answer questions about the subpoenas because he lacked any knowledge of the investigation due to his recusal. As Acting Attorney General for this investigation, you are in the best position to answer our questions in this matter. Therefore, please respond to the following questions as soon as possible, but by no later than May 31, 2013:

1. On what date did Attorney General Holder recuse himself from this investigation?
2. How did you learn of Attorney General Holder's recusal? Did Attorney General Holder personally inform you of his intent to recuse himself from the investigation? Was his recusal made in writing or memorialized in any manner?
3. Did every Justice Department official or employee who possessed the improperly disclosed information at issue in this investigation recuse themselves? Did every Department official or employee interviewed by the FBI in connection with this investigation recuse themselves from this investigation? Please provide a list of all Justice Department officials or employees who recused themselves from this investigation.
4. Do you also possess the improperly disclosed information at issue in this investigation? If so, were you interviewed by the FBI in connection with this investigation?

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<sup>2</sup> 28 CFR §50.10(b)

<sup>3</sup> See 28 CFR §50.10(d)

<sup>4</sup> See 28 CFR §50.10(g)(1)

<sup>5</sup> *Some Question Whether AP Leak on Al-Qaeda Plot Put U.S. at Risk*, The Washington Post, May 15, 2013

5. If you do possess the information at issue in this investigation, why were you not required to also recuse yourself? Please provide us with any and all applicable statutes, regulations or internal Justice Department policies that govern the recusal of a Department official or employee from an investigation.
6. Attorney General Holder testified that he was "95% percent certain, that the Deputy Attorney General, acting in my stead, was the one who authorized the subpoena...." He then clarified that he believed you did personally approve the subpoena requests. Please confirm that you did, in fact, personally approve and sign the subpoena requests for AP telephone toll records.
7. The Justice Department issued subpoenas for several telephone lines that are reportedly accessible to and used by a large number of reporters. What steps did the Department take, if any, to narrow the scope of the telephone toll records request to ensure that only those telephone toll records made by the subject reporters and staff were obtained?
8. The Justice Department issued subpoenas for a telephone line located in the U.S. House of Representatives Press Gallery. Are there any statutes, regulations or internal Justice Department policies applicable to requests for telephone toll records for a telephone located inside the U.S. Capitol complex, even if such telephone line is paid for by a media outlet?
9. 28 CFR §50.10(b) requires the Department to take all reasonable alternative investigative steps prior to obtaining telephone toll records pertaining to a member of the media. Please describe all of the alternative investigative steps the Department took in this investigation prior to issuing the subpoenas for the AP telephone toll records.
10. It has been reported that the AP refrained from releasing the story of the Yemeni bomb plot for a week until Obama administration officials confirmed that doing so would not jeopardize national security interests. This indicates a willingness on the part of the AP to work with the Justice Department on issues affecting national security. Given this, why did the Department not seek the AP's assistance with its request or provide notice to the AP prior to issuing the subpoenas?
11. 28 CFR §50.10(d) requires prior notice to a media outlet where "the responsible Assistant Attorney General determines that such negotiations [with the media] would not pose a substantial threat to the integrity of the investigation..." Is it the Department's position that a substantial threat to the integrity of the investigation existed in this instance? Please provide a detailed explanation of the facts and circumstances in this case that justified foregoing prior notice to the AP under the "substantial threat" exception.

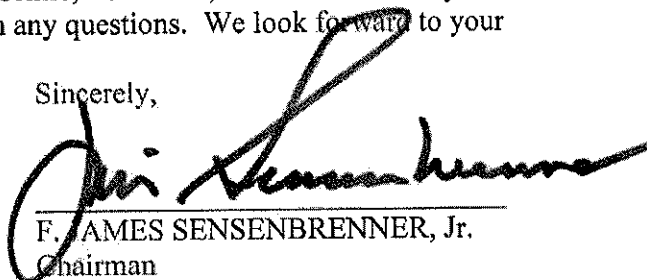
Mr. James M. Cole  
May 22, 2013  
Page 4

Thank you for your cooperation in responding to our questions. Please contact Samuel Ramer, Senior Counsel for the Subcommittee on Crime, Terrorism, Homeland Security and Investigations at [sam.ramer@mail.house.gov](mailto:sam.ramer@mail.house.gov) with any questions. We look forward to your prompt reply.

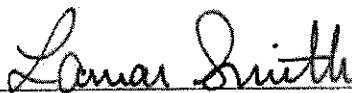


BOB GOODLATTE  
Chairman  
House Committee on the Judiciary

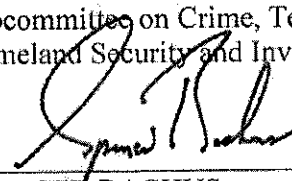
Sincerely,



F. JAMES SENSENBRENNER, Jr.  
Chairman  
Subcommittee on Crime, Terrorism  
Homeland Security and Investigations



LAMAR SMITH  
Member  
House Committee on the Judiciary



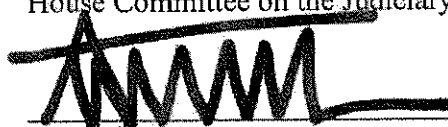
SPENCER BACHUS  
Member  
House Committee on the Judiciary



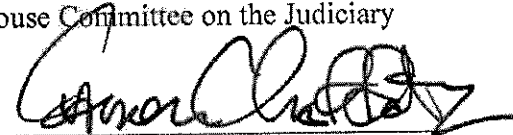
J. RANDY FORBES  
Member  
House Committee on the Judiciary



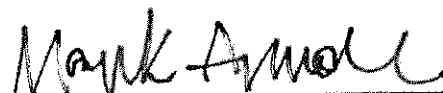
LOUIE GOHMERT  
Member  
House Committee on the Judiciary



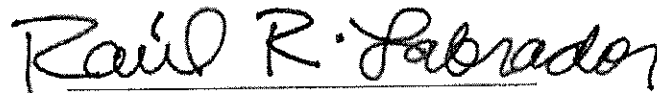
TED POE  
Member  
House Committee on the Judiciary



JASON CHAFFETZ  
Member  
House Committee on the Judiciary



MARK AMODEI  
Member  
House Committee on the Judiciary



RAUL R. LABRADOR  
Member  
House Committee on the Judiciary



GEORGE HOLDING  
Member  
House Committee on the Judiciary



DOUG COLLINS  
Member  
House Committee on the Judiciary

Mr. James M. Cole  
May 22, 2013  
Page 5



RON DeSANTIS  
Member  
House Committee on the Judiciary



DARRELL E. ISSA  
Member  
House Committee on the Judiciary

cc: The Honorable John Conyers, Ranking Member  
cc: The Honorable Bobby Scott, Ranking Member, Subcommittee on Crime, Terrorism,  
Homeland Security and Investigations





**U.S. Department of Justice**

**Office of Legislative Affairs**

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Office of the Assistant Attorney General

*Washington, D.C. 20530*

June 4, 2013

The Honorable Bob Goodlatte  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter to the Deputy Attorney General, dated May 22, 2013, concerning the Department's investigation of unauthorized disclosures of classified national security information which was published in May 2012. We are sending identical responses to the other Members who joined in your letter to us.

The Department's June 3, 2013, letter to Chairmen Goodlatte and Sensenbrenner underscores the Attorney General's commitment to striking the right balance between safeguarding national security information and ensuring the substantial rights of a free press to gather and report the news. The Deputy Attorney General shares that commitment. He is fully engaged in both the ongoing review of Department policies regarding investigations involving the media that the Attorney General is conducting and the constructive dialogue we have begun with news media representatives and other interested parties about these important interests.

You have asked several questions about both the Attorney General's decision to recuse himself and our deliberative decisions and actions relating to other aspects of the investigation. Because this criminal investigation is ongoing, we are limited in what we can share about specific details and deliberations. Longstanding Department policy, across administrations, limits the disclosure of non-public information relating to open criminal investigations. And investigations dealing with highly classified information, such as this one, require particular caution. Nonetheless, we endeavor to respond as fully as we are able at this time.

In May 2012, the Department opened a criminal investigation into the unauthorized disclosures of classified information. Because such unauthorized disclosures can put lives at risk and pose a serious risk of harm to our national security, it is important that we pursue these matters using appropriate law enforcement tools. In this case, the Department conducted an extensive investigation, including more than 550 interviews and the review of tens of thousands of pages of documents, before seeking the telephone toll records at issue.

As the Attorney General recently explained—and as he testified in June 2012 and on May 15, 2013—he was interviewed by the FBI in connection with the criminal investigation into the unauthorized disclosures of classified information. Based upon the interview, and in light of his frequent contact with the media during the relevant time period, the Attorney General recused himself in order to avoid any potential appearance of a conflict of interest. As the Department has previously stated, other senior Department officials have also recused themselves in this matter. Since the Attorney General's recusal, the investigation has been conducted by the FBI, under the direction of the U.S. Attorney for the District of Columbia and under the general supervision of the Deputy Attorney General. While the Deputy Attorney General also possessed the information at issue and was interviewed, he did not have any contacts with the media during that time, thus avoiding the appearance of a conflict of interest. Consistent with federal statutes and Department practices, the Deputy Attorney General approved the decision to seek the toll records in his role as Acting Attorney General for purposes of the investigation.

Department policy provides that subpoenas for toll records associated with media organizations should be requested only in certain circumstances. First, there must be reasonable grounds to believe that a federal crime has been committed and that the information sought by the subpoena is essential to the success of the investigation. Second, we must take all reasonable alternative investigative steps before even considering the issuance of a subpoena for toll records related to a media organization. Third, any subpoena that is issued should be drawn as narrowly as possible, be directed at relevant information regarding a limited subject matter, and cover a reasonably limited time period. We take these requirements very seriously and followed them in this matter.

Consistent with Department policy, the subpoenas seeking toll records associated with AP personnel were limited in time and scope. They sought only toll records and did not seek the content of any calls. We note that toll records—not unlike a telephone bill—merely provide a list of incoming and outgoing calls, including the time, date, and duration of each call. The subpoenas here were narrowly drawn. They covered only a portion of a two-month period, and they only sought toll records for phone numbers which prosecutors had a basis to believe were associated with AP personnel involved in the reporting of the classified information. The toll records have been and will remain closely held. They have been used solely for purposes of this ongoing investigation, and access has been and will continue to be restricted accordingly.

As you note, Department regulations provide that negotiations must be pursued with the affected member of the news media “where the responsible Assistant Attorney General determines that such negotiations would not pose a substantial threat to the integrity of the investigation.” 28 C.F.R. § 50.10(d). Although the ongoing nature of the investigation prevents us from sharing additional details about this case, there are a number of reasons—depending on the circumstances of a given case—that may lead the Department to refrain from negotiating with a media organization before seeking a subpoena for telephone toll records. For example, through the negotiation process, the potential target (the leaker) could become aware of the investigation, its focus, and its scope, and seek to destroy evidence, create a false narrative as a defense, or otherwise obstruct the investigation. It is also important to note that forgoing

The Honorable Bob Goodlatte


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negotiation does not permit the Department to obtain records in "secret." The media organization must be notified under the regulations in any event. Forgoing negotiation simply permits a delay of that notification for a maximum of 90 days in order to preserve the integrity of the investigation. That requirement was met in this matter.

The Department is committed to improving the laws and policies that are intended to safeguard the interests of the press in reporting the news and the public in receiving it. At the same time, the Department is committed to using appropriate law enforcement tools to investigate unauthorized disclosures of classified information that can cause grave harm to our national security.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Kadzik' with a stylized flourish at the end.

Peter J. Kadzik  
Principal Deputy Assistant Attorney General

cc: The Honorable John Conyers, Jr.  
Ranking Minority Member

**From:** Jarrett, Valerie [mailto:(b) (6)]  
**Sent:** Friday, May 31, 2013 06:53 AM  
**To:** Kendricks, David (OAG)  
**Subject:** Fw: From Richard Prince of the Trotter Group

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**From:** Richard Prince [mailto:(b) (6)]  
**Sent:** Friday, May 31, 2013 06:51 AM  
**To:** Jarrett, Valerie  
**Subject:** From Richard Prince of the Trotter Group

Good morning, Valerie Jarrett,

This is Richard Prince of the Trotter Group, who writes about diversity issues in the media,  
<http://mije.org/richardprince>

I'm writing because you told us we could always contact you. I've been trying to write about Attorney General Eric Holder's interactions with the news media over the leak investigations, but have been unable to get phone calls or emails returned from his press secretary, Adora Andy.

This has put me at a disadvantage in trying to report on this issue from the perspective of journalists of color. Not only have the messages to Adora Andy been unreturned, but when I went through the official route of contacting the duty officer last Friday, I got no response either.

All of the stories I have seen have quoted unnamed officials. Who are these people?

Anything you can do to speed the information flow would be appreciated. I understand there are more meetings today, but I have no idea who has been invited or what the guidelines are for who gets an invitation.

As I reported Wednesday, "The original Justice Department announcement said a week ago, 'The Attorney General will consult a diverse and representative group of media organizations. In the coming days, he looks forward to meaningful engagement with these media representatives as well as other experts inside and outside government. . . .'"  
<http://mije.org/richardprince/holder-wants-media-talks-record>

And yet I know of no journalist of color who was invited or attended the Thursday meeting.

Thanks!

Richard Prince

(b) (6)

**Richardson, Margaret (OAG)**

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**From:** Richardson, Margaret (OAG)  
**Sent:** Wednesday, May 29, 2013 11:55 AM  
**To:** (b) (6)  
**Subject:** Re: Media meetings

Not at all! I'm sorry we haven't gotten all the invites out. Talk to you soon!

----- Original Message -----

**From:** Dan Klaidman [mailto:(b) (6)]  
**Sent:** Wednesday, May 29, 2013 11:53 AM  
**To:** Richardson, Margaret (OAG)  
**Subject:** Re: Media meetings

No problem, Margaret. Didn't mean to be a pest. Talk soon.

On May 29, 2013, at 11:42 AM, "Richardson, Margaret (OAG)" <Margaret.Richardson@usdoj.gov> wrote:

> Hi Dan,  
>  
> My apologies for the delay! We will certainly include you and others from Daily Beast/Newsweek. We are in the process of pulling these together and will be in touch very soon.

>  
> Thank you,  
> Margaret

>  
>  
> ----- Original Message -----

> **From:** Dan Klaidman [mailto:(b) (6)]  
> **Sent:** Wednesday, May 29, 2013 11:14 AM  
> **To:** Richardson, Margaret (OAG)  
> **Subject:** Media meetings

>  
> Margaret,

>  
> Just wondering if you had a chance to look at my email from yesterday. Was hoping to attend the AG's meeting with media reps. Or have you already reached out to someone at Newsweek/The Daily Beast?

>  
> Thanks,  
>  
> Dan

May 31, 2013

Friday

# Non-Responsive Records

10:00 AM - 10:30 AM

**Guidelines Meeting // General Counsel**

AG's Conference Room

POC: Molly Moran

DOJ: Margaret Richardson, Jenny Mosier, Denise Cheung, John Carlin, DAG Cole, Dave O'Neil, Stuart Goldberg, Nanda Chitre

CRM: Paul O'Brien, Deborah Sorkin, John Lynch

**Visitors:**

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)



**May 31, 2013 Continued**

**Friday**

**10:30 AM - 11:00 AM**

**Office Time**

**11:00 AM - 12:30 PM**

**Guidelines Meeting**

AG's Conference Room

POC: Molly Moran

DOJ: Margaret Richardson, Jenny Mosier, Denise Cheung, Channing Phillips, DAG Cole, Dave O'Neil, Stuart Goldberg, Nanda Chitre

CRM: Paul O'Brien, Deborah Sorkin, John Lynch

**Visitors:**

Bryan Boughton, Fox News - Confirmed

Chris Isham, CBS News - Declined

Robin Sproul, ABC News – Confirmed (also, John W. Zucker, ABC's attorney)

Sam Feist, CNN News - Declined

Ken Strickland, NBC News - Declined

Ron Elving, NPR News – Declined//Alternate: Executive Vice President for News

Kinsey Wilson and General Counsel Denise Leary

Marilyn Thompson, Reuters – Confirmed (also, Stuart Karle)

# Non-Responsive Records

**3:00 PM - 4:20 PM**

**Guidelines Meeting**

AG's Conference Room

POC: Molly Moran

DOJ: Margaret Richardson, Jenny Mosier, Denise Cheung, DAG Cole, Dave O'Neil, Stuart Goldberg, Nanda Chitre

CRM: Paul O'Brien, Deborah Sorkin, John Lynch

**Visitors:**

Susan Goldberg, Bloomberg – Confirmed (also, Thomas Golden, of Willkie Farr law firm)

David Lauter, Tribune – Confirmed (also, Lee Levine of Levine Sullivan Koch & Schulz)

Susan Page, USA Today – Confirmed (also, Barbara Wall)

# Non-Responsive-Records

# Non-Responsive Records

5:00 PM - 6:30 PM

**Guidelines Meeting**

AG's Conference Room

POC: Molly Moran

DOJ: Margaret Richardson, Jenny Mosier, Denise Cheung, DAG Cole, Stuart Goldberg, Dave O'Neil, Paul O'Brien, Deborah Sorkin, Nanda Chitre

**Visitors:**

**George Curry**, Publisher, National Newspaper Publishers Association News Service - decline

**Maurice Foster**, Executive Director, National Association of Black Journalists - decline

**Anna Lopez Buck**, Executive Director, National Association of Hispanic Journalists – confirmed (plus NAHJ's President Hugo Balta)

**Michael Tune**, Executive Director, National Lesbian and Gay Journalists Association - decline

**Pamala Silas**, Executive Director, Native American Journalists Association - decline

**Kathy Chow**, Executive Director, Asian American Journalists Association - decline

**Ms. Walt Swanston**, Interim Executive Director, **UNITY: Journalists for Diversity, Inc.** -



**June 03, 2013 Continued**

Monday

confirmed

# Non-Responsive Records

2:30 PM - 4:00 PM

## **Guidelines Meeting**

AG's Conference Room

POC: Molly Moran

DOJ: Margaret Richardson, Jenny Mosier, Denise Cheung, DAG Cole, Stuart Goldberg, Dave O'Neil, Paul O'Brien, Deborah Sorkin, Nanda Chitre

## **Visitors:**

### **ABC News**

Kerry Smith, Senior Vice President, Editorial Quality: [Kerry.Smith@abc.com](mailto:Kerry.Smith@abc.com)

### **CNN News**

David Vigilante, General Counsel: [david.vigilante@turner.com](mailto:david.vigilante@turner.com)

### **NBC News Universal**

Susan E. Weiner, Executive Vice President & Deputy General Counsel:  
[susan.weiner@nbcuni.com](mailto:susan.weiner@nbcuni.com)

Ken Strickland, Vice President & Washington Bureau Chief: Strickland,  
[Ken.Strickland@nbcuni.com](mailto:Ken.Strickland@nbcuni.com)

### **Dow Jones & Company, Inc.**

Jason P. Conti, Vice President & Associate General Counsel & Chief Compliance Officer:  
[jason.conti@dowjones.com](mailto:jason.conti@dowjones.com)

Mark Jackson, General Counsel

Gerson Zweifach, the New Corp GC

### **The Washington Post**

Jay Kennedy, Vice President – General Counsel & Labor: [kennedyjb@washpost.com](mailto:kennedyjb@washpost.com)

James McLaughlin, Associate Counsel: [mclaughlinj@washpost.com](mailto:mclaughlinj@washpost.com)

### **The New York Times Company**

Michael Golden, Vice Chairman: [michael.golden@nytimes.com](mailto:michael.golden@nytimes.com)

David E. McCraw, Vice President and Assistant General Counsel: [mccraw@nytimes.com](mailto:mccraw@nytimes.com)

### **The New Yorker**

Lynn Oberlander, General Counsel: [Lynn\\_oberlander@newyorker.com](mailto:Lynn_oberlander@newyorker.com)

### **New York Daily News**

Matthew Leish, Vice President & Assistant General Counsel: [mleish@nydailynews.com](mailto:mleish@nydailynews.com)

### **Associated Press News**

Karen Kaiser, Associate General Counsel: [kkaiser@ap.org](mailto:kkaiser@ap.org)

### **CBS News**

Susanna Lowy, General Counsel

Christopher Isham, Bureau Chief

Lee Levine, Partner in law firm Levine Sullivan Koch and Schulz

Barbara Wall, Vice President and Associate General Counsel, Gannett Co., Inc.

Lawrence Kramer, President and Publisher, USA Today International Corporation

Robert Allbritton, President, Allbritton Communications

Jerald Fritz, Senior, Vice President for Legal and Strategic Affairs, Allbritton Communications

David Martosko, U.S. Political Editor, Daily Mail

Eve Burton, Senior Vice President and General Counsel, Hearst Corporation

June 07, 2013

Friday

# Non-Responsive Records

10:30 AM - 12:00 PM

**Guidelines Meeting with First Amendment/Media Groups/Academics**

AG's Conference Room

POC: Molly Moran

DOJ: Margaret Richardson, Jenny Mosier, Denise Cheung, DAG Cole, Stuart Goldberg, Dave O'Neil, Paul O'Brien, Deborah Sorkin, Nanda Chitre

**Visitors:**

**FIRST AMENDMENT GROUP**

**Mike Cavender**, Executive Director, Radio Television Digital News Association –

Confirmed (plus: Kathleen Kirby of Wiley Rein)

Joe Skeel, Executive Director, Society of Professional Journalists – Decline (Alternate: James Romoser of BakerHostetler)

Bruce Brown, Executive Director, Reporters Committee for Freedom of the Press – Confirmed (plus: Gregg Leslie, Legal Director)

Kevin Goldberg, American Society of News Editors – Confirmed (plus: Timothy Franklin, ASNE/FOI Co-Chair & Managing Editor/Bloomberg News)

Herb Jackson, President, Regional Reporters Association – No Response

Gordon H. Smith, President and CEO, National Association of Broadcasters – Decline

(Alternate: Jane Mago, Nat'l Assoc. of Broadcasters & Curtis LeGeyt, Senior Vice President and Legislative Counsel, Government Relations)

Gabe Rottman, First Amendment Counsel, ACLU - Confirmed

Kurt Wimmer, General Counsel, Newspaper Association of America – Confirmed (plus: Caroline Little, President and CEO)

Delphine Halgand, Reporters Without Borders - Confirmed

Sandra Mims Rowe, Chairman, Committee to Protect Journalists – Decline (Alternate: Clarence Page)

**ACADEMIC GROUP**

Alex Jones, Joan Shorenstein Center on the Press, Politics and Public Policy, Harvard University - Confirmed

Frank Sesno, School of Media and Public Affairs Director, School of Media and Public Affairs at George Washington University - Decline

Orin Kerr, School of Media and Public Affairs at George Washington University - Decline

Barbara Cochran, University of Missouri-Columbia, Missouri School of Journalism - Confirmed

Matt Mansfield, Journalism, Northwestern University, Medill School of Journalism – Decline (Alternate: Ellen Shearer, Co-Director)

Barbara Feinman Todd, Journalism/Program Director, Georgetown University – No response

Martha Kumar, Towson University - Confirmed

Randy Eliason, American University School of Law - Decline

Robert Chesney, University of Texas, School of Law - Decline

Geoff Stone, University of Chicago School of Law – Decline

Steve Vladeck, American - Decline

Nicole Austin-Hillery, NYU – Confirmed

Jan Schaffer, Executive Director, J-Lab: The Institute for Interactive Journalism – Confirmed

Elizabeth Goitein, Brennan Center - Confirmed

# Non-Responsive Records

June 17, 2013

Monday

# Non-Responsive Records

1:30 PM - 3:00 PM

**Guidelines Meeting**

AG's Conference Room

POC: Molly Moran

DOJ: Margaret Richardson, Jenny Mosier, Nanda Chitre, Denise Cheung, Channing Phillips, Stuart Goldberg, Dave O'Neil, Paul O'Brien, Deborah Sorkin

**Attendees:**

Randy Eliason, George Washington University School of Law

Olivier Knox, Yahoo News

Susan Benkelman, Editorial Director and Senior VP, CQ Roll Call

Bob Cusack, Managing Editor, The Hill

Kathleen McCleery, PBS

Daniel Morcate, Univision

Gerardo Reyes, Univision

Antonieta Cadiz, La Opinion

Jessie (JJ) Green, National Security Correspondent, WTOP

Brad Weltman, Magazine Publishers Association

Laura Handman, Magazine Publishers Association

Geof Stone, University of Chicago

**June 17, 2013 Continued**

**Monday**

**Charles Tobin**, National Press Club

**Angela Greiling Keane**, National Press Club

**John Avlon**, Newsweek/Daily Beast

**Jordan Fabian**, DC Correspondents, Univision and Fusion

**April Ryan**, White House Correspondent, American Urban Radio Network

# Non-Responsive Records